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Opinion Committee

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MBJ
FILE # ML-19379-93

ATTENTION:

Madeleine B. Johnson
Opinion Committee

I.D.# 19379
ack 3-29-93

Ladies & Gentlemen:

RQ-523

Mr. Tom Bartlett, Chairman, of the Harris County Appraisal Review Board, has requested advice regarding the following question:

1. Can the appraisal review board, under section 25.25(d) Texas Tax Code, correct the market value of a property that receives productivity valuation under chapter 23 of the Texas Tax Code?

Please supply us with your opinion on the question presented. A memorandum brief is enclosed.

Very truly yours,

MIKE DRISCOLL
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c:

Mr. Tom Bartlett
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McKerall, Rock W.A. Owens, Frank E. Sanders, Richard S. Hill, Rosalinda Garcia.

MEMORANDUM BRIEF

RE: Can the appraisal review board, under section 25.25(d) Texas Tax Code, correct the market value of a property that receives productivity valuation under chapter 23 of the Texas Tax Code?

Section 25.25(d) is titled "Correction of Appraisal Roll" and states in part:

(d) At any time prior to the date the taxes become delinquent, a property owner or the chief appraiser may file a motion with the appraisal review board to change the appraisal roll to correct an error that resulted in an incorrect appraised value for the owner's property.

However, the error may not be corrected unless it resulted in an appraised value that exceeds by more than one-third the correct appraised value.

If the appraisal roll is changed under this subsection, the property owner must pay to each affected taxing unit a late-correction penalty equal to 10 percent of the amount of taxes as calculated on the basis of the correct appraised value.

The roll may not be changed under this subsection if the property was the subject of a protest brought by the property owner under Chapter 41 or if the appraised value of the property was established as a result of a written agreement between the property owner or his agent and the appraisal district. (*emphasis and formatting ours*)

This section does not require that the error be clerical in nature and is generally utilized by property owners who did not file a timely protest after receiving a notice of appraised value under Section 25.19, Tax Code. Section 25.25(d) further mandates that the property owner pay a 10% penalty based on the corrected appraised value.

The Tax Code at section 1.04(8) defines "appraised value" as the value which was determined under Chapter 23 of the Tax Code. Chapter 23, subchapters C, D, and E provide that the "appraised value" of property appraised under those subchapters is its productivity value, although the chief appraiser is also required to determine and record the market value of the property. See subchapter C, §23.46(a), subchapter D, §23.52(e), and subchapter E, §23.76(c). Those subchapters further provide that the chief appraiser determine the market value for roll back purposes. See subchapter C, §23.46(c), subchapter D, §23.55(a), and subchapter E, §23.76(a).

MEMORANDUM BRIEF

Thus, in the context of Chapter 23, Section 25.25(d) appears to provide only for correction of the productivity value, as that is the value upon which taxes are based. Section 41.41(i), titled "Right of Protest", provides that a property owner has the right to file a timely protest of the determination of the appraised value or market value as determined under subchapters C (land designated for agricultural use), D (agricultural land) and E (timber land) of chapter 23. Thus, under chapter 41, Texas Tax Code, a property owner can protest the market value together with the appraised value of his land pursuant to a notice of appraised value. These sections make it appear that the market value of the property can only be changed pursuant to a timely filed protest.

Section 25.25(d) mandates that a 10% penalty be assessed to the property owner. As changing the market value under this section of the code results in no change of current tax liability, it would be impossible for the taxing units to calculate the 10% penalty. This supports a construction that a change in market value is not permitted. While appearing to be an unjust result, we think that by the overall scheme of Section 25.25(d) the legislature has properly distributed the burden or inconvenience that would otherwise result. As a matter of public policy, the law favors that property owners be prudent in the management of their affairs with government agencies. Op.Tex.Att'y Gen. No. MW-146 (1980). A property owner who believes his appraised productivity value is excessive may invoke the provisions of 25.25(d).

Consequently, for property appraised under subchapters C, D, or E, Chapter 23, section 25.25(d) can only be invoked by a property owner who meets four conditions:

1. the appraised productivity value of the property must have been over appraised by at least one third;
2. taxes must have been paid prior to the delinquency date;
3. the property must not have been the subject of a chapter 41 protest (timely protest) or the value contested must not have been the subject of an agreement between the property owner and the district; and
4. the property owner must pay to the affected taxing units a 10% penalty based on the corrected appraised value.

If the appraised value is corrected under this section and the property owner has already paid taxes, the property owner is entitled to a refund from each taxing unit which the section required him to pay. The processing of the refund is an inconvenience on the taxing units which can only be offset by the 10% penalty assessed the property owner.

MEMORANDUM BRIEF

Even if the property owner is able to obtain a correction under this section prior to the delinquency date (and thus avoid paying taxes), the taxing units are still inconvenienced since they have already set a tax rate and cannot increase the rate to offset the reduction in their tax base. This inconvenience to the taxing units can only be offset by the 10% penalty assessed the property owner. Finally, the penalty serves to encourage property owners to bring their concerns to the appraisal review board in a timely manner.

It should be noted that section 25.25(e) provides that taxing units in which the property is located are entitled to:

1. notice of the time and date of hearing;
2. present evidence before the review board;
3. make arguments to the review board; and
4. receive written notice of the review board's determination.

This is the only time that a taxing unit is provided with the opportunity to challenge the appraised value of a single taxpayer's property. This section overrides the otherwise explicit provision of Section 41.03 that prevents taxing units from participating in all of the above. It thus appears that the overall scheme of 25.25(d) was to burden property owners who failed to file a timely protest.

In conclusion, it appears that section 25.25(d) of the Texas Tax Code prohibits the correction of only the market value of property with an appraised value based on the agricultural productivity of the property as determined under chapter 23. Section 25.25(d) would further prohibit any correction which would negate the assessment of a 10% percent penalty against the property owner.